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In the

Supreme Court of the United States

OCTOBER TERM, 1962

No. 495

INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, *et al.*,

Petitioners,

v.

CENTRAL AIRLINES, INC.,

Respondent.

PETITIONERS' ANSWER TO REPLY TO PETITION FOR CERTIORARI

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1. The Reply in General

Respondent has chosen obfuscation for its reply to petition for certiorari. It seeks to convince this Court that there are fact issues where there are none. It seeks to imply that the petition is directed to the 153rd District Court of Travis County, Texas, rather than to the Texas Court of Civil Appeals. The Court of Civil Appeals made conclusions of both fact and law in its Opinion, as required by Rule 453, Texas Rules of Civil Procedure, and as to questions of fact and the sufficiency of evidence the Court of Civil Appeals is

the "Court of last resort" in Texas.[1] Respondent did not file a motion for rehearing with the Court of Civil Appeals, nor did it seek writ of error as to any part of the decision; therefore, it has no standing to complain of facts which the Court of Appeals found adverse to the respondent.[2] Hence, the ten pages of its reply (pp. 12-21) designed to prove that the Court of Civil Appeals "has misunderstood the record" (p. 12) should be given no consideration.

The reason this case was tried to a court and not to a jury was simply that there never was and there is not now any material fact issue. True, the trial court made certain erroneous conclusions of law as to undisputed facts, but this has no bearing on this petition. Likewise, the Court of Civil Appeals erred in some—but not all—of its legal conclusions, but those conclusions raise issues of law not of fact.

Thus it is unnecessary for petitioners to consume the time of this Court replying to factual arguments which comprise the bulk of respondent's reply brief. However, one factual matter was conspicuous by its absence, and should therefore be noted:

Nowhere does respondent contest the accuracy of petitioners' summary of specific facts relating to petitioners' exhaustion of System Board remedies (Appendix D, pp. 29a-31a), nor does it contest the fact of respondent's withdrawal of its members from the System Board (pp. 7-8 of Petition).

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[1] *4 Tex. Jur. 2d 378; Texas & P. R. Co. v. El Paso, 126 Tex. 86, 85 S. W. 2d 245; Corzelius v. Oliver, 148 Tex. 76, 220 S. W. 2d 632.*

[2] Under Rules 453, 455, and 458, Texas Rules of Civil Procedure, respondent was obligated to raise timely legal objection to the Opinion, and failing to do so is it now bound by that Opinion. *Lone Star Steel Co. v. Owens, 302 S. W. 2d 213, 233.*

As to these, respondent chooses to ignore what the trial court held, that "*the company refused* to recognize the Board's authority in the matter" (Tr. 55, emphasis added). In its summation of evidence, respondent carefully avoided stating anything on this point (pp. 9 and 22), relying only on the erroneous conclusion of the Court of Civil Appeals, which held that the strikers had "abandoned further available steps" in the grievance procedure. But that Court likewise failed to note the undisputed fact that respondent withdrew its members from the System Board, leaving the Board incapable of deadlocking and incapable of obtaining appointment of a neutral to break a deadlock. It is thus not an issue of fact that there were no further available steps open to petitioners. It is indeed curious that respondent gingerly avoids discussing what actually happened as to this highly pertinent issue.

2. First Reason for Granting Writ

As to the first reason for granting the writ—that the strike was akin to an unfair labor practice strike—respondent never comes to grips with the issue and wholly ignores the question posed by the juxtaposition of *Mastro Plastics*[3] with the line of decisions treating the duty to bargain under the Railway Labor Act as parallel to the duty imposed by the National Labor Relations Act. Likewise, respondent was silent as to the conclusions drawn from the cases cited in the Petition at pages 14-17, questioning whether the traditional

[3] *Mastro Plastics Corp. v. N.L.R.B.*, 350 U. S. 270, 100 L. Ed. 309, 76 S. Ct. 349.

concept of "major" and "minor" disputes adequately describes all strikes under the Railway Labor Act.

3. Second Reason for Granting Writ

It is also noteworthy that respondent brushes off the second reason for granting the writ—that respondent disestablished the System Board of Adjustment—with the bald statement that this is "legally impossible." (p. 9.) If so, it is all the more reason for the writ to be granted for although it may be "legally impossible," respondent did it. True, it was legally impossible in the sense that it was unlawful.

4. Jurisdiction

Out of an abundance of caution, petitioners here submit a brief reply to respondent's jurisdictional argument, although a reply may not be necessary because the established decisions in this Honorable Court fail to support respondent's position.

In substance, respondent contends that there was no final judgment below because no motion for rehearing was filed in the Texas Supreme Court as to the denial of writ of error. No such motion for rehearing is required, and none of the authorities cited by respondent deal with that question.[4]

As this Court held in *Market Street Ry. Co. v. Railroad Commission, 324 U. S. 548, 551, 65 S. Ct. 770, 778:*

> "The judgment for our purposes is final when the issues are adjudged. Such finality is not deferred by the

[4]The authorities cited on page 6 of respondent's reply brief deal with cases where petitioner failed to seek review in a higher state tribunal. None involve absence of a second attempt to obtain review in the same tribunal.

existence of a latent power in the rendering court to reopen or revise its judgment. The waiting period prescribed by the statute here seems to reserve a power of that character. The decision during this period does not lack the attributes of an adjudication, it is not awaiting lapse of time to become a judgment, it merely is subject to modification. When this period runs, unless the court has moved meanwhile, it becomes powerless to change or modify the judgment. City of Oakland v. Pacific Coast Lumber and Mill Co., 172 Cal. 332, 337, 156 P. 468, Ann. Cas. 1917E, 259; In re Estate of Ross, 189 Cal. 317, 318, 207 P. 1014. The rule is thus a limitation on the time during which the court may reconsider, which in absence of such rule might expire only with the end of the term or some other event determinative under local law. Such latent powers of state courts over their judgments are too variable and indeterminate to serve as tests of our jurisdiction."[3]

The petition herein is directed to an intermediate appellate court, whose judgment is final when review has been denied by the highest court of the state, and it is not necessary to make a second request for such review. *Chesapeake & O. R. Co. v. Mihas, 280 U. S. 102, 74 L. Ed. 204, 50 S. Ct. 42; Minneapolis, St. P. & S. S. M. R. Co. v. Roe., 279 U. S. 410, 73 L. Ed. 766, 49 S. Ct. 363.*

In *Southern Railway Co. v. Clift, 260 U. S. 316, 67 L. Ed. 283*, the Court indicated that the existence of a state

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[3]Under Rule 506, Texas Rules of Civil Procedure,

"The judgment of the Supreme Court shall be final at the expiration of fifteen days from the rendition thereof, when no motion for rehearing has been filed."

procedure permitting the filing of a petition for rehearing does not affect the finality of the judgment.

Respectfully submitted,

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